

Service Date: July 30, 1991

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER of the Petition of	)	UTILITY DIVISION
Colstrip Energy Limited Partnership to	)	
Determine Certain Obligations Under a	)	DOCKET NO. 91.4.15
Power Purchase Agreement with Montana	)	
Power Company. <sup>1</sup>	)	ORDER NO. 5564

PROPOSED ORDER

General Background

On April 11, 1991 the Montana Public Service Commission (Commission) received a petition from Colstrip Energy Limited Partnership (CELP) to determine certain conditions of a power purchase agreement (agreement or contract) between CELP and the Montana Power Company (MPC). In the petition, filed pursuant to §§ 69-3-603 - 604, MCA, CELP asked the Commission to resolve a dispute between CELP and MPC over the amount of capacity and energy that MPC is obligated to purchase from the CELP project (project) at contract prices pursuant to the agreement.<sup>2</sup> On May

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<sup>1</sup> This heading has been changed from that used in previous documents in this Docket in order to better reflect the nature of this proceeding.

<sup>2</sup> The CELP project is a qualifying electric power production facility (QF) pursuant to the Public Utility Regulatory Policies Act (PURPA). See 16 USC § 796 (17-22), 16

USC § 824a-3, 18 CFR § 292.207, and ARM 38.5.1901-1908. The CELP project has been referred to in other Commission dockets as the "Montana One" project.

3, 1991 the Commission received an Answer from MPC responding to and challenging certain allegations made in the petition.

On May 21, 1991 the Commission issued a Notice of Petition and Statement of Procedure requesting that the parties, by June 14, 1991, submit statements explaining the Commission's jurisdiction to decide this dispute. Statements were duly filed and on July 1, 1991 the Commission voted to accept jurisdiction. Pursuant to Section 2-4-611, MCA, and ARM 38.2.3601, the Commission designated staff attorney Robin McHugh to preside as hearing examiner. Following a conference call with the parties the examiner established an expedited schedule in order to meet the statutory deadline for a Commission decision.<sup>3</sup> The parties submitted preliminary briefs on July 15, 1991. Hearing was held on July 18, 1991. The parties submitted post-hearing briefs on July 25, 1991.

### Jurisdiction

In its request for statements from the parties on jurisdiction the Commission asked, "1) whether 69-3-603, MCA, requires that the Commission interpret fully executed contracts, such as the power purchase agreement in dispute here, or 2) whether the Commission's obligation under 69-3-603, MCA, is limited to determining the rates and contract conditions when par-\_\_\_\_\_

<sup>3</sup> Section 69-3-603(2), MCA, requires that the Commission issue a decision in this proceeding within 120 days of filing, or, in this case, August 9, 1991. ties are unable to reach agreement." Both parties argue that the Commission has jurisdiction to decide the present dispute.

CELP argues that 69-3-603, MCA, grants the Commission jurisdiction.

Section 69-3-603, MCA, reads as follows:

**Required sale of electricity under rates and conditions prescribed by commission.** (1) If a qualifying small power production facility and a utility are unable to mutually agree to a contract for the sale of electricity or a price for the electricity to be purchased by the utility, the commission shall require the utility to purchase the electricity under rates and conditions established under the provisions of subsection (2).

(2) The commission shall determine the rates and conditions of the contract upon petition of a qualifying small power production facility or a utility or during a rate proceeding involving the review of rates paid by a utility for electricity purchased from a qualifying small power production facility. The commission shall render a decision within 120 days of receipt of the petition or before the completion of the rate proceeding. The rates and conditions of the determination shall be made according to the standards prescribed in 69-3-604.

CELP acknowledges that the language "unable to mutually agree to a contract for the sale of electricity or a price for the electricity to be purchased by the utility ..." could be interpreted as limiting Commission jurisdiction to situations where a QF and a utility cannot reach agreement. CELP points out, however, that this language does not expressly impose such a limitation and that there is nothing prohibiting the Commission from determining a dispute where a contract has already been executed. CELP further points out that subsection (2) of Section 69-3-603, MCA, by referring to "the contract" and "rates paid by a utility for electricity purchased ...", contemplates Commission jurisdiction over fully executed contracts. CELP also contends that the legislative history of 69-3-603, MCA, as well as PURPA and corresponding federal regulations support Commission jurisdiction of the instant dispute.

Like CELP, MPC argues that Section 69-3-603, MCA, plainly gives the Commission jurisdiction of this dispute. In addition, MPC contends that Commission rules, by including "any contract pertaining to the sale or purchase of electric energy or capacity" under the definition of "rate," contemplate Commission jurisdiction in this case. See generally ARM 38.5.1901 -1908 ; and ARM 38.5.1903(2), 38.5.1905(2) and 38.5.1901(2)(g).

The Commission finds that, by itself, section 69-3-603(1), MCA, would preclude Commission jurisdiction over a fully executed contract. However, given the language in section 69-3-603(2), MCA, legislative history, federal law and regulations, and Commission rules, the Commission concludes that it must exercise jurisdiction over disputes of this kind.

#### Background to the Dispute

On October 15, 1984 AEM Corporation (AEM) (a predecessor in interest to CELP) entered into a power purchase agreement with MPC. At the time it entered into the agreement AEM planned to build a qualifying facility at Colstrip, Montana, consisting of one combustion turbine (nominally rated at 10 MW) and one steam turbine (nominally rated at 20 MW). The facility was to utilize coal liquification technology developed by a parent company of AEM. Electric power produced by the facility was to be sold to MPC over 35 years at rates negotiated in the agreement. The facility was expected to begin operation in March of 1986.

Due to an inability to arrange financing for a coal liquification plant, in 1987 AEM changed its plans and decided to build a waste coal, single boiler power plant. On March 28, 1988 AEM and MPC executed an amendment to the agreement, substituting the expected March, 1986 operation date with an operation date of December 31, 1990. AEM also agreed in the amendment to a performance schedule leading to the operation date and a change to the original contract rates. Other than the new operation date, performance schedule and change in rates, the amendment did not change the original agreement. On May 3, 1990 the CELP project began commercial operation.

#### Description of the Dispute

The issue in dispute is the amount of capacity and energy that MPC is obligated to purchase from the CELP project at rates determined in the agreement. It is CELP's position that MPC must purchase all energy and capacity delivered from the project at contract rates. It is MPC's position that it is not obligated under the agreement to purchase, at contract rates, energy in excess of 260,610,000 kwh per contract year or capacity in excess of 30,000 kw.

#### Exhibits

The following exhibits were admitted into evidence at the hearing:

CELP No. 1 --Copy of Power Purchase Agreement between AEM  
and MPC, October 15, 1984.

CELP No. 2 -- Copy of First Amendment to Power Purchase  
Agreement between AEM and MPC.

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|------------|----|---|--|
| CELP No. 3 | -- | Copy of letter to Owen Orndorff from Robert C. Stuart, July 23, 1986.   |  |
| CELP No. 4 | -- | Copy of letter to Owen Orndorff from Ted Williams, July 22, 1987.   |  |
| CELP No. 5 | -- | Copy of contract for Engineering, Procurement and Construction of the CELP Project between Montana One partners and Bechtel Construction, Inc., April 18, 1988. |  |
| CELP No. 6 | -- | Copy of letter to Owen Orndorff from Robert C. Stuart, May 18, 1988.  |  |

- CELP No. 7 -- Copy of letter to Owen Orndorff from Ted Williams, June 6, 1988.
- CELP No. 8 -- Copy of letter to Jeffrey Smith from Debbie Askin (with attachment), July 15, 1991.
- CELP No. 9 -- Copy of letter to Jeffrey Smith from Debbie Askin (with attachment), July 11, 1991.
- CELP No. 10 -- Copy of §§ 69-3-601 - 604, MCA, and ARM 38.5.1901-1908.
- CELP No. 11 -- Copy of Commission Order No. 5017.
- CELP No. 12 -- Copy of letter to Jeffrey Smith from Robert C. Stuart, September 12, 1990.
- CELP No. 13 -- Copy of letter to Robert C. Stuart from Owen Orndorff, September 21, 1990.
- CELP No. 14 -- Copy of letter to Ron Blendu from Owen Orndorff, November 7, 1990.
- CELP No. 15 -- Copy of letter to Marjorie Thomas from Owen Orndorff, November 12, 1990.
- CELP No. 16 -- Copy of letter to Owen Orndorff from Robert C. Stuart, November 12, 1990.
- CELP No. 17 -- Copy of letter to Owen Orndorff from Howard VanNoy, April 2, 1991.
- CELP No. 18 -- Copy of letter to Howard VanNoy from Owen Orndorff, April 5, 1991.
- CELP No. 19 -- Statement of Original Capacity/Energy Rates vs. Actual Rates.
- CELP No. 20 -- Statement of Capacity Net Cost/kwh.
- CELP No. 21 -- Prepared Testimony of Mark Henwood - with deletions agreed to by the parties.

MPC No. 2<sup>4</sup> -- Copy of letter to Robert C. Stuart from  
Owen Orndorff, June 27, 1986.

Witnesses

The following witnesses appeared and testified:

For CELP -- Owen H. Orndorff, Vice President and General  
Counsel of Rosebud Energy Corp., a general partner of CELP.

Mark Henwood, President of Henwood Energy Services, Inc.

For MPC -- Richard F. Cromer, Vice President and General  
Manager of Continental Energy Services, Inc.

Robert C. Stuart, Director of Power and Transmission  
Contracts for MPC.

Findings of Fact and Discussion

MPC argues that proper contract interpretation focuses on the intent of the parties. CELP argues that, since mutual

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<sup>4</sup> There is no MPC No. 1 in evidence. intent of the parties cannot be demonstrated, the contract must be interpreted in its entirety, and meaning must be given to each of its terms. The Commission concludes that when interpreting a contract under Montana law the mutual intent of the parties should be ascertained; and that when interpreting a written contract intent should be ascertained from the writing alone if that is possible. See §§ 28-3-301 and 303, MCA. In Glacier



Campground v. Wild Rivers, Inc., 182 Mont. 389, 394-95, 597 P.2d 96, \_\_\_\_ (1978), the

Montana Supreme Court wrote,

Section |28-3-301, MCA–, mandates that a contract must be interpreted so as to give effect to the mutual intention of the parties as it existed at the time of contracting so far as that is ascertainable and lawful. The intention of the parties is to be ascertained, if possible, solely from the language used in the instrument, section |28-3-303, MCA–, and resort may be had to extrinsic evidence only when the contract, on its face, appears ambiguous or uncertain.

Therefore, to resolve the present dispute the Commission must look first to the language of the agreement. If a relatively clear and unambiguous intent can be derived from the language then the commission need look no further.

The Commission finds that the following sections of the agreement, along with section 1 of Appendix A to the agreement, are relevant to this dispute:

- 1.2 Annual Actual Capacity Factor: The ratio of the actual Energy output over a period of a Contract Year to the product of annual peak Capacity and 8,760 hours; or if the period for which the Annual Actual Capacity Factor is to be determined is less than a Contract Year, it will be the ratio of actual Energy output during the period to the product of peak Capacity during the period and the number of hours in the period.
- 1.3 Annual Actual Capacity: The amount of capacity in kilowatts (kW) which Seller produces from Facility, and shall be determined on the basis of the average of the actual eleven (11) highest measured monthly Capacity for the Contract Year, or in the event of a partial Contract Year, the average of all the actual measured monthly Capacity during such partial Contract Year.
- 1.4 Annual Contract Capacity: The amount of capacity in kilowatts (kW) which Seller commits to supply to

Company pursuant to Section 3 of this Agreement. Annual Contract Capacity shall be determined on the basis of the estimated average of the eleven (11) highest measured monthly Capacity for the Contract Year, or in the event of a partial Contract Year, the average of all the measured monthly Capacity during such partial Contract Year.

- 1.5 Annual Contract Capacity Factor: The estimated Annual Actual Capacity Factor specified in Section 3 of this Agreement, as from time to time adjusted.
- 1.6 Capacity: The maximum net amount of electric power the Facility generates and delivers to Company during any demand interval in any period at the high-voltage bus of the Company at the side of Facility, expressed in kilowatts (kW). The maximum Capacity of Facility is 35,000 kW. Unless otherwise agreed, all Capacity measurements will be based on a fifteen (15) minute demand interval.
- 1.7 Capacity Rating: The manufacturer's name plate rating of the Facility as of the Operation Date, which is 35,000 kW.  
\* \* \*
- 1.10 Contract Year: A twelve-month period of time commencing immediately after midnight on July 1 of any year and ending at midnight on June 30 of the following year.  
\* \* \*
- 1.13 Energy: The amount of Energy expressed in kilowatthours (kWh) provided to Company by Seller in conjunction with the supply of Capacity under this Agreement.
- 1.14 Facility: That Qualifying Facility having a Capacity Rating and which is owned, controlled or operated by Seller, or its successors or assigns, and subject of this Agreement.  
\* \* \*
- 1.18 Operation Date: The day commencing at 12:01 am following the day during which all features and equipment of Project and Special Facilities have reached a degree of completion and reliability, such that

they are capable of operating simultaneously to produce and receive power. The Operation Date is expected to occur in March, 1986.

\* \* \*

- 3 Sale of Power Seller agrees to sell and deliver and Company agrees to purchase and accept delivery of Capacity and Energy at the Point of Interconnection, subject to terms and conditions hereinafter set forth, in accordance with this Agreement. During the Operation Period, Seller hereby commits to an Annual Contract Capacity of 30,000 kW at an Annual Contract Capacity Factor of eighty-five percent (85%) in the first Contract Year following the Operation Date, subject to adjustment based on Annual Actual Capacity and Annual Actual Capacity Factor at the end of each Contract Year, and hereby affirms that this amount will be no greater than the Capacity Rating of Facility.

\* \* \*

- 4.5 If Annual Contract Capacity changes or is proven different from the amount indicated in Section 3, a new Annual Contract Capacity amount shall be established for Facility, and such new amount shall be used for purposes of this Agreement in the place of the Annual Contract Capacity amount originally indicated in Section 3. If the Annual Contract Capacity is permanently reduced at any time after the first Contract Year following the Operation Date, then such reduction shall be treated as a Capacity Sales Reduction and Section 5 (excluding 5.5 and 5.6) shall apply to such reduction. The provisions of Section 5 pertaining to a Capacity Sales Reduction shall not apply to such reduction occurring within the first contract year following the Operation Date.

\* \* \*

- 9.1 Seller shall operate and maintain the Project in a safe manner and in accordance with Prudent Electrical Practice so as to produce maximum Capacity and Energy to the extent conditions permit.

#### Appendix A - Section 1

#### Rate

The Company, for each month of the Operation Period, agrees to pay Seller for energy and capacity in accordance with the following:

1.1 Energy:

Payment = ACER x kWhe

Where: ACER = Annual Contract Energy  
Rate for the Contract Year in  
which energy is produced.  
kWhe = Kilowatthours of energy

supplied to Company as  
determined by multiplying the  
metered energy by the power loss  
factor specified in Section 1.2 of  
Appendix C.

1.2 Capacity:

Subject to the terms of this Appendix A, payments for capacity will be made monthly based on the following calculation:

Payment =  $\frac{ACCR}{12} \times \frac{ACCF}{.85} \times ACKW$

Where: ACCR = Annual Contract Capacity  
Rate as determined from the  
appropriate rate option selection  
made under Section 2 of this  
Appendix A.

ACKW = Annual Contract Capacity  
multiplied by the power loss factor  
specified in Section 1.2 of  
Appendix C.

ACCF = Annual Contract Capacity  
Factor.

1.3 Annual Capacity Payment Adjustment

Within a reasonable period after the end of each Contract Year, or partial Contract Year where applicable, Seller's Actual Capacity Value for such Contract Year will be determined in accordance with the following formula:

Actual Capacity Value =  $ACCR \times \frac{AACF}{.85} \times AAKW$

Where: ACCR = (As defined in Section  
1.2 of this Appendix A.)

AAKW = Annual Actual Capacity  
which, if in excess of Annual  
Contract Capacity,  
will be deemed equal to Annual  
Contract Capacity.

AAKW for each Contract  
Year will be determined as the  
average of the 11 highest monthly  
measured Capacity multiplied by  
the power loss factor specified in  
Appendix C.

For a partial Contract Year,  
AAKW will be similarly determined  
as the average of the measured  
monthly Capacity for each month  
of such partial Contract Year  
multiplied by the power loss factor  
specified in Appendix C.

AACF = Annual Actual Capacity  
Factor.

The annual capacity payment adjustment will be determined as  
the difference between the sum of monthly Capacity payments  
made pursuant to Section 1.2 of this Appendix A and the  
Actual Capacity Value determined pursuant to this Section 1.3

If Actual Capacity Value exceeds the sum of the monthly  
Capacity payments, the difference will be paid to Seller by  
Company within 30 days of Annual Capacity Payment Adjust-  
ment determination.

If the sum of monthly Capacity payments exceeds the Actual  
Capacity Value, the difference will be paid to Company by  
Seller within 30 days after receipt of invoice.

### Capacity

The Commission finds that the agreement obligates MPC to purchase a  
maximum of 35,000 kw of capacity from the CELP project at rates determined in the  
agreement. Section 3 of the agreement clearly states that in the first contract year follow-

ing the operation date MPC will purchase capacity of 30,000 kw at a capacity factor of 85 percent. Section 3 also states clearly that contract capacity is subject to adjustment each year, but "will be no greater than the Capacity Rating of Facility." Section 1.7 of the agreement places the capacity rating of the facility at 35,000 kw. In addition to section 3, sections 1.3, 1.4, 1.5 and 4.5 all indicate a clear intent to adjust contract capacity and contract capacity factor. Specifically, section 4.5 states,

If Annual Contract Capacity changes or is proven different from the amount indicated in section 3, a new Annual Contract Capacity amount shall be established for facility, and such new amount shall be used for purposes of this Agreement in the place of the Annual Contract Capacity amount originally indicated in Section 3.

(Emphasis added.) Consistent with the plain meaning of these sections, CELP writes at page 4 of its post-hearing brief that,

In order to give meaning to all of the terms of the Agreement consistent with the plain meaning of such terms, particularly with respect to Sections 1.4, 3 and 4.5 of the Agreement and Section 1.3 of Appendix A, the Annual Contract Capacity of the Facility must be re-rated, upwards or downwards, on an annual basis based upon the prior year performance of the Facility, and that Section 1.3 of Appendix A serves as a "true-up" after each contract year to adjust for any over or under payments because payments during each contract year are based upon the prior year's performance.

The Commission agrees with this, with the exception that, as noted, there is a contractual cap on upward adjustment of capacity at 35,000 kw.

CELP argues that the contract requires it to deliver 35,000 kw of capacity to MPC, and that it ordered the facility constructed so that, net of house power, the facility could meet that requirement. The result is that the name plate rating of the facility is

41,500 kw, which assures CELP the ability to deliver what it contends is the contractually required 35,000 kw of capacity to MPC. CELP further argues that the 35,000 kw was never intended to be an exact number, but was intended to be an estimate; and, therefore, CELP is entitled to be paid at contract rates for the capacity over 35,000 kw that the facility has demonstrated it can produce. Finally, CELP argues that MPC, because it reviewed the engineering, procurement and construction (EPC) contract that CELP had with Bechtel Construction, Inc., knew, or should have known that the facility was to be constructed to guarantee delivery of 35,000 kw, and would consequently have a name plate rating larger than 35,000 kw to allow for house power requirements.

The Commission finds that, CELP's understanding of the agreement notwithstanding, the agreement itself clearly does not require a delivery of 35,000 kw of capacity. The only guarantee of a specific capacity delivery in the agreement is in section 3, where CELP commits to deliver 30,000 kw of capacity in the first year. Capacity deliveries after the first year are all subject to adjustment. CELP argues that the word "net" in the first line of section 1.6 must be read as "net of house power," and that from this reading it must be concluded that construction of a 41,500 kw name plate facility was reasonable in order to guarantee delivery of the 35,000 kw that CELP asserts is required by the agreement. Whether or not CELP is correct about the meaning of "net" in section 1.6, that section clearly states that capacity is the amount of electric power the facility generates and delivers to MPC. Sections 1.6, 1.7 and 3 set a maximum, not a guaranteed delivery under the agreement of 35,000 kw. That 35,000 kw cannot fairly be interpreted as an estimate. "The maximum Capacity of Facility is 35,000 kw." (Section 1.6, emphasis

added.) "The manufacturer's name plate Rating of the Facility ... is 35,000 kw." (Section 1.7, emphasis added.) Finally, the record indicates that MPC reviewed the EPC contract in order to assure that the CELP project would meet the amended operation date and would have an adequate fuel supply. The review was not conducted in order to assure that the design was consistent with the agreement. (Tr. pp. 171-4.) In section 11 of the agreement MPC specifically disclaims that its review constituted approval of the project design. It was CELP's responsibility to construct a facility sufficient to meet the terms of the agreement. The Commission finds that whether MPC had actual, or constructive, knowledge of the project design, MPC's obligation remains as described by the language of the agreement.

MPC argues that section 1.3 of Appendix A limits its purchase of capacity under the agreement to no more than 30,000 kw. Specifically, MPC points to the definition of "AAKW" in that section, described as "Annual Actual Capacity which, if in excess of Annual Contract Capacity, will be deemed equal to Annual Contract Capacity." (Emphasis added.) MPC contends that the emphasized language means that since annual contract capacity is set at 30,000 kw in section 3, MPC does not have to purchase more than 30,000 kw of capacity under the agreement. This argument is not convincing. First, the 30,000 kw of annual contract capacity identified in section 3 is for the first year only and may be adjusted up or down after that. Therefore, there is no reason to conclude that the capacity referred to in the phrase "deemed equal to Annual Contract Capacity" will never be greater than 30,000 kw. Second, adopting MPC's interpretation of section 1.3 of Appendix A would change the plain meaning of section 3 by giving no effect to the part that



allows for capacity adjustment up to 35,000 kw. This would violate section 28-3-202, MCA, which states, "The whole of a contract is to be taken together so as to give effect to every part if reasonably practicable, each clause helping to interpret the other." The Commission agrees with CELP that section 1.3 of Appendix A must be interpreted as providing a capacity payment "true-up" mechanism, and not as making meaningless other parts of the agreement.

### Energy

The Commission finds that MPC is obligated under the agreement to purchase a maximum of 306,600,000 kwh of energy from the CELP project per contract year. Section 1.13 of the agreement defines energy as, "The amount of Energy expressed in kilowatthours (kwh) provided to Company by Seller in conjunction with the supply of Capacity under this Agreement." The maximum capacity that MPC is obligated to purchase is 35,000 kw at 100 percent capacity factor. That corresponds to a maximum energy delivery of 306,600,000 (35,000 kw x 8,760 hours).

MPC acknowledges that the maximum energy output of the project under the agreement would be 35,000 kw (the name plate rating) at 100 percent capacity factor. (Tr. p. 151 and post-hearing brief p. 8.) MPC argues, however, that the maximum energy it is obligated to purchase is 260,610,000 kwh, or 35,000 kw at an 85 percent capacity factor. This argument is not consistent with the argument MPC makes with respect to capacity. As described, MPC contends the agreement obligates it to purchase a maximum of 30,000 kw of capacity. If this were the case, the corresponding energy purchase would be

262,800,000 kwh at 100 percent capacity factor (30,000 kw x 8,760 hours) or 223,380,000 kwh at 85 percent capacity factor (30,000 kw x 8,760 hours x .85). The Commission has found that section 3 of the agreement obligates a purchase of 30,000 kw at 85 percent capacity factor in the first year of the contract. Thereafter capacity is adjustable under the agreement up to a maximum of 35,000 kw, and capacity factor is also adjustable up to 100 percent. It follows, therefore, that the agreement obligates a maximum energy purchase corresponding to the maximum capacity and capacity factor.

CELP argues that MPC is obligated to purchase at contract rates all the energy the project produces. CELP refers to section 9.1 ("Seller shall operate --- the Project --- so as to produce maximum energy ...") and Appendix A, section 1.1 (energy payment = contract energy rate x kwh supplied to MPC) to support this argument. The Commission finds that section 9.1 must be read in conjunction with sections 3 and 1.13. Section 3 establishes maximum capacity obligation, and section 1.13 establishes a maximum corresponding energy obligation. Therefore, "maximum" as used in section 9.1 must be interpreted to refer to the maximum capacity and energy established in the agreement. Section 1.1 of Appendix A describes only how the energy payment is to be calculated. It does not create an obligation on MPC's part to purchase all energy the plant can produce at contract rates.

#### Conclusions of Law

The Colstrip Energy Limited Partnership Project is a qualifying small power production facility. §§ 69-3-601 - 604, MCA.

The Montana Power Company is a public utility regulated by the Montana Public Service Commission. §§ 69-3-101 and 69-3-601(3), MCA.

The Public Service Commission has the jurisdiction to determine rates and conditions of a power purchase agreement between a qualifying facility and a public utility. § 69-3-603, MCA.

Order

IT IS HEREBY determined that under the Agreement here at issue, as amended, MPC is obligated to purchase from the CELP project, at rates determined in the agreement, as amended, a maximum of 35,000 kw of annual contract capacity, and a maximum of 306,600,000 kwh of annual contract energy.

Determination of ratemaking treatment required by this Order, if any, is reserved to a future filing and proceeding.

Done and Dated this 29th day of July, 1991.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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ROBIN A. MCHUGH, Hearing Examiner

ATTEST:

Ann Peck  
Commission Secretary

(SEAL)

NOTE: Parties have the right to file exceptions to this Order with the Commission and to request oral argument. By agreement of the parties, exceptions must be filed by August 1, 1991 (fax permitted to 5:00 p.m.).